

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

MFA.No. 462 of 1996()

OPMV.1131/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA
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APPELLANT: 3RD RESPONDENT:

THE ORIENTAL INSURANCE CO. LTD.,
KOZHIKODE, REPRESENTED BY ITS
ADMINISTRATOR OFFICER,
REGIONAL OFFICE (LEGAL CELL)
M.G.ROAD, ERNAKULAM.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS:

1. KUMARAN, S/O.RAMAN,
AGED 35 YEARS, THANNIMUGATH CHERIYA
PURAYIL HOUSE, PANTHALAYANI AMSOM DESOM
GURUKULAM BEACH, KOYILANDY.
2. A.K.VIJAYAN, S/O.KUNHIKRISHNAN NAIR,
AGE NOT KNOWN, PARAYANTA KUNIYIL HOUSE,
P.O. KOTTOOR, NADUVANNUR.
3. NARAYANAN KUTTY, S/O.KUNHIKRISHNAN NAIR,
AGED 27 YEARS, PARAYANTA KUZHIYIL HOUSE,
NADUVANNUR AMSOM KOTTOOR DESOM,
DL.NO.2608/84 D. BADGE NO.1500/84.

BY ADV. SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 462 of 1996

Dated this the 23rd July, 2007.

J U D G M E N T

The 3rd respondent, Insurer, in O.P.(M.V.) No.1131/1995, on the file of the Motor Accidents Claims Tribunal, Vadakara, is the appellant. The first respondent filed a petition claiming compensation against respondents 2 and 3, and also against the appellant, contending that on 1.7.1992, while he was walking along the side of the road, an autorickshaw driven by the 3rd respondent hit against him causing injuries. He claimed an amount of Rupees One Lakh as compensation. Respondents 1 and 2 did not contest the matter. Insurer alone filed the written statement. It was admitted that the vehicle was covered with a valid policy of insurance. But the negligence alleged was denied. Quantum of compensation claimed was also disputed. The Tribunal, without recording the oral evidence marked in the first information report, as well as in the accident-cum-wound certificate, directed the appellant to pay a consolidated amount of Rs.29,000/= as compensation.

2. The learned counsel appearing for the appellant has contented that there is absolutely no discussion on any point, and compensation was fixed according to the whims and fancies of the Tribunal. It is argued that the only reason stated by the Tribunal for awarding Rs.29,000/= is as follows:-

"8. Taking into consideration the fact that the petitioner has sustained injuries as noticed in Ext.A2 and also (6th page begins) that he was in the hospital for about 12 days, and also of his pain and sufferings, I feel that a total sum of Rs.29,000/= can be awarded on all counts together with interest at 12% per annum from the date of petition i.e. 28.12.92."

3. No reason has been stated by the Tribunal. But evidence, Ext.A2, produced by the first respondent shows that he sustained comminuted fracture on the right wrist . He was treated as an inpatient for 12 days. The first respondent had claimed an amount of Rs.100/= for transport to hospital, Rs.5000/= for extra nourishment, and Rs.3000/= for damage to clothing. He also claimed an amount of Rs.5000/= for treatment expenses. Considering that the first respondent sustained injuries and treated as an inpatient for 12 days, the amount claimed for transport to hospital, damage to clothing, extra nourishment and the treatment expenses cannot be said to be

exorbitant. First respondent is entitled to get at least a minimum of Rs.10,000/= for pain and sufferings. He is entitled to get some more amount on account of the disability also. So, it is not possible to hold that the amount awarded as compensation is highly exorbitant.

4. Further, it is a case in which owner and driver did not contest the matter. There is nothing on record to show that appellant obtained permission to contest the matter on merits. So, I do not think it is just and proper to re-open the matter, at this distant point of time. There is no merit in this appeal and is only to be dismissed.

In the result, the appeal is dismissed.

C.M.P.No.1963/1996 in M.F.A.No.462/1996 is dismissed.

**K.PADMANABHAN NAIR,
JUDGE**

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 462 of 1996

J U D G M E N T

Dated: 23rd July, 2007.
